



JENNIFER M. GRANHOLM  
GOVERNOR

STATE OF MICHIGAN  
OFFICE OF FINANCIAL AND INSURANCE REGULATION  
DEPARTMENT OF ENERGY, LABOR & ECONOMIC GROWTH  
STANLEY "SKIP" PRUSS, DIRECTOR

KEN ROSS  
COMMISSIONER

## BILL ANALYSIS

**BILL NUMBER:** Senate Bill 1174 (S-3) As Passed the Senate  
**TOPIC:** Super Majority Shareholder Voting Rights  
**SPONSOR:** Senator Van Woerkom  
**CO-SPONSORS:** None  
**COMMITTEE:** House Insurance  
**Analysis Done:** April 12, 2010

### POSITION

The Office of Financial and Insurance Regulation (OFIR) is neutral regarding this legislation, as amended.

### PROBLEM/BACKGROUND

Chapter 13 of the Insurance Code 1956 PA 218, MCL 500.101-500.8302, provides the regulatory framework for holding companies. Section 1311 of the chapter specifically addresses the procedure for merging with or acquiring control of a domestic insurer. A person, as defined in section 1301, who proposes to enter into an agreement to merge with or otherwise acquire control of a domestic insurer is required to file an application requesting approval for a change of control with the Commissioner; this is known as a Form A filing. The transaction proposed in the Form A filing must be approved by the Commissioner, who analyzes it in light of the factors contained in section 1315:

- After the change of control, the extent to which the domestic insurer would be able to satisfy the requirements for the issuance of a certificate of authority to write the types of insurance for which it is presently authorized.
- Whether the effect of the merger or other acquisition of control would be substantially to lessen competition in insurance in this state or tend to create a monopoly in this state.
- The financial condition of any acquiring party is such as might jeopardize the financial stability of the insurer, or prejudice the interest of its policyholders or the interests of any remaining securityholders who are unaffiliated with the acquiring party.
- If the terms of the offer, request, invitation, agreement, or acquisition are unfair and unreasonable to the insurer's policyholders or securityholders.

- The plans or proposals that the acquiring party has to liquidate the insurer, sell its assets, consolidate or merge it with any person, or to make any other material change in its business or corporate structure or management, are unfair and unreasonable to the insurer's policyholders, and not in the public interest.
- The competence, experience, and integrity of those persons who would control the operation of the insurer are such that it would not be in the interest of the insurer's policyholders or the general public to permit the merger or other acquisition of control.

At least one smaller domestic insurer feels vulnerable to hostile acquisition. In that case, a Form A is pending and under current review by the Commissioner.

### **DESCRIPTION OF BILL**

Senate Bill 1174 (S-3) amends section 1311 of the Insurance Code by adding subsection (2). The new subsection provides that if a domestic insurer has 200 employees or fewer, directly or indirectly through an affiliate transacting the insurer's business, any proposal to enter into an agreement to merge with or otherwise acquire control of the domestic insurer or any person controlling the domestic insurer, or for the purpose of obtaining control, that seeks the election of 2 or more members of the board of directors of the domestic insurer or any person controlling the domestic insurer for the purpose of obtaining control, shall, in addition to the requirements of section 1311(1), require the approval of 66.67% of the outstanding voting securities if the proposal is not supported by a majority of the domestic insurer's board of directors.

### **SUMMARY OF ARGUMENTS**

#### **Pro**

The proponents believe additional protection is justified in order to protect small Michigan insurance companies from hostile takeover by out of state entities thereby ensuring their operations won't be relocated out of state.

#### **Con**

A super majority requirement may have the effect of devaluing shareholder control in situations where a majority – but not a super majority – believes a transaction is in the best interest of the insurer.

### **FISCAL/ECONOMIC IMPACT**

OFIR has identified the following revenue or budgetary implications in this bill:

(a) To the Office of Financial and Insurance Regulation: None

Budgetary:

Revenue:

Comments:

(b) To the Department of Energy, Labor & Economic Growth: None

Budgetary:

Revenue:

Comments:

(c) To the State of Michigan: None

Budgetary:

Revenue:

Comments:

(d) To Local Governments within this State: None

Comments:

#### **OTHER STATE DEPARTMENTS**

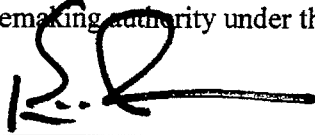
None Known

#### **ANY OTHER PERTINENT INFORMATION**

The Office of Financial and Insurance Regulation is required to determine whether the continued operation of an insurer transacting the business of insurance in this state is safe, reliable, and entitled to public confidence or if it is hazardous to policyholders, creditors, or the public. Insurance regulators monitor the financial condition of insurers, including investment activities. OFIR reviews quality, type and maturity distribution of insurers' investment portfolio and applies the statutory standards found in section 436a to ensure an insurer is safe, reliable and entitled to public confidence. In situations where a change in control is proposed, the Commissioner reviews the Form A in light of the previously cited factors in section 1315 and requires a 5 year business plan including financial projections for the domestic insurer under direction of the new acquirer. These standards work in concert under the current regulatory framework to ensure that policy holders are protected, both on the front end – through investment and asset monitoring and on the back end – through a thorough Form A review.

**ADMINISTRATIVE RULES IMPACT**

The proposed legislation would amend the Michigan Insurance Code. OFIR has general rulemaking authority under the Insurance Code, 1956 PA 218.

A handwritten signature in black ink, appearing to be 'K. Ross', written over a horizontal line.

Ken Ross  
Commissioner

3-17-10  
Date